

Official Title and Summary

Prepared by the Attorney General

DISCOUNTS ON PRESCRIPTION DRUGS. INITIATIVE STATUTE.

- Establishes discount prescription drug program, overseen by California Department of Health Services.
- Enables certain low- and moderate-income California residents to purchase prescription drugs at reduced prices.
- Authorizes Department: to contract with participating pharmacies to sell prescription drugs at agreed-upon discounts negotiated in advance; to negotiate rebate agreements with participating drug manufacturers.
- Imposes \$15 annual application fee.
- Creates state fund for deposit of drug manufacturers' rebate payments.
- Requires Department's prompt determination of residents' eligibility, based on listed qualifications.
- Permits outreach programs to increase public awareness.
- Allows program to be terminated under specified conditions.

SUMMARY OF LEGISLATIVE ANALYST'S ESTIMATE OF NET STATE AND LOCAL GOVERNMENT FISCAL IMPACT:

- One-time and ongoing state costs, potentially in the millions to low tens of millions of dollars annually, for administration and outreach activities for a new drug discount program. A significant share of these costs would probably be borne by the state General Fund.
- State costs, potentially in the low tens of millions of dollars, to cover the funding gap between when drug rebates are collected by the state and when the state pays funds to pharmacies for drug discounts provided to consumers. Any such costs not covered through advance rebate payments from drug makers would be borne by the state General Fund.
- Unknown potentially significant savings for state and county health programs due to the availability of drug discounts.
- Potential unknown effects on state revenues and expenditures from changes in prices and quantities of drugs sold in California.

ANALYSIS BY THE LEGISLATIVE ANALYST

BACKGROUND

Prescription Drug Coverage. Currently, several state and federal programs provide prescription drug coverage to eligible individuals. The state's Medi-Cal Program, which is administered by the Department of Health Services (DHS), provides prescription drugs for low-income children and adults. The state's Managed Risk Medical Insurance Board administers the Healthy Families Program, which provides prescription drugs for children in low-income and moderate-income families who do not qualify for Medi-Cal.

Beginning January 2006, the federal government will provide prescription drug coverage to persons enrolled in Medicare, a federal health program for elderly and disabled persons. (This would include some persons enrolled in Medi-Cal who are also enrolled in Medicare.) Various other programs funded with state or federal funds also provide assistance to help pay part or all of the cost of drugs for specified individuals.

In addition, many Californians receive coverage for prescription drugs through private insurance that is purchased by individuals or provided by their employer or the employer of a member of their family.

Drug Discount Programs. California, a number of other states, and private associations and drug makers have established drug discount programs. These programs help certain consumers, including individuals who are not eligible for state and federal programs that provide drug coverage, purchase prescription drugs at reduced prices. Current California law, for example, requires retail pharmacies to sell prescription drugs at a discount to elderly and disabled persons enrolled in Medicare as a condition of a pharmacy's participation in the Medi-Cal Program.

PROPOSAL

This proposition creates a new state drug discount program to reduce the costs that certain residents of the state would pay for prescription drugs purchased at pharmacies. The major components of the measure are outlined below.

ANALYSIS BY THE LEGISLATIVE ANALYST (CONTINUED)

Discount Card Program. Under the new drug discount program, eligible persons could obtain a card that would qualify them for discounts on their drug purchases at pharmacies. The program would be open to California residents in families with an income at or below 300 percent of the federal poverty level—up to almost \$29,000 a year for an individual or about \$58,000 for a family of four. Persons enrolled in Medicare could obtain discount cards for drugs not covered by Medicare. Persons could not participate in the new drug discount program if they receive their drug coverage from private health insurance, from the Medi-Cal or Healthy Families Programs, or from other public programs supported with state or federal funding. Persons generally could not obtain a drug discount card for at least three months after leaving these private or public sources of drug coverage.

The new drug discount program would be administered by DHS, which could contract with a private vendor for assistance. Participants would enroll in the program by paying a \$15 fee, and would pay an annual renewal fee of the same amount. Eligible persons could enroll or reenroll in the program at any pharmacy, doctor's office, or clinic, which chose to participate in the drug discount program. Applications and renewals could also be handled through an Internet Web site or through a telephone call center. The DHS would review applications and mail the drug discount cards to eligible persons, usually within four days.

The state would seek two types of discounts in order to obtain lower prices for persons with the new drug discount cards. First, pharmacies that voluntarily chose to participate in the program would agree to sell prescription drugs to cardholders at an agreed-upon discount negotiated in advance with the state. In addition, pharmacies would further discount the price to reflect any rebates the state negotiated with drug makers. (The pharmacies would subsequently be reimbursed for this second type of discount with rebates collected by the state from drug makers.)

The DHS could end the drug discount program if it found there were insufficient discounts to make the program work, if too few persons enrolled in the program, or if DHS could not find a vendor to help run the program.

Private Drug Discount Programs. The measure directs DHS to implement agreements with drug discount programs operated by drug makers and other private groups so that the discount cards would automatically provide consumers with access to the best discount available to them for a particular drug purchase.

Outreach Efforts. The measure directs DHS to conduct an outreach program to inform state residents about the new drug discount program.

Related Provisions in Proposition 79. Proposition 79 on this ballot also establishes a new state drug discount program. The key differences between Proposition 78 and Proposition 79 are shown in Figure 1.

The State Constitution provides that if a particular provision of a proposition that has been approved by the voters is in conflict with a particular provision of another proposition approved by the voters, only the provision in the measure with the higher number of yes votes would take effect. Proposition 78 specifies that its provisions would go into effect in their entirety, and that none of the provisions of a competing measure such as Proposition 79 would take effect, if Proposition 78 received the higher number of yes votes.

FISCAL EFFECTS

This measure could have a number of fiscal effects on state and local government. We discuss several major factors below that could result in costs or savings.

State Costs for Administration and Outreach Activities. The DHS would incur significant startup costs, as well as ongoing costs, for administrative and outreach activities to implement the new drug discount program created by this proposition.

This would include administrative costs to:

- Establish the new program, including any new information technology systems that would be needed for its operation.
- Operate the Internet Web site and the call center to receive applications for drug discount cards.
- Process applications and renewals of drug discount cards.
- Negotiate and collect rebates from drug manufacturers and make advance rebate payments to pharmacies.
- Coordinate the state's drug discount program with other private drug discount programs.

The state could also incur additional costs for the proposed outreach activities, potentially including costs for radio or television advertising, written materials, and other promotional efforts to make consumers aware of the drug discount program.

In the aggregate, these administrative and outreach costs would probably range from the millions to low tens of millions of dollars annually. The exact fiscal effect would depend primarily on the extent of outreach efforts and the number of consumers who chose to participate in the drug discount program.

ANALYSIS BY THE LEGISLATIVE ANALYST (CONTINUED)

FIGURE 1

KEY DIFFERENCES BETWEEN PROPOSITIONS 78 AND 79

	Proposition 78	Proposition 79
General eligibility requirements	<ul style="list-style-type: none"> California residents in families with an income at or below 300 percent of the federal poverty level. (About \$29,000 annually for an individual and \$58,000 for a family of four.) No such provision. 	<ul style="list-style-type: none"> California residents in families with an income at or below 400 percent of the federal poverty level. (About \$38,000 annually for an individual and \$77,000 for a family of four.) Also, persons in families with medical expenses at or above 5 percent of their family's income.
Persons excluded from coverage	<ul style="list-style-type: none"> Persons with outpatient prescription drug coverage through Medi-Cal, Healthy Families, a third-party payer, or a health plan or drug discount program supported with state or federal funds (except Medicare beneficiaries). Certain persons with drug coverage, during the three-month period prior to the month the person applied for a drug discount card. 	<ul style="list-style-type: none"> Persons with outpatient prescription drug coverage through Medi-Cal or Healthy Families (except Medicare beneficiaries). No such provision.
Application and renewal fee	<ul style="list-style-type: none"> \$15 per year. 	<ul style="list-style-type: none"> \$10 per year.
Method of obtaining rebates from drug makers	<ul style="list-style-type: none"> Negotiated with drug makers. No such provision. 	<ul style="list-style-type: none"> Negotiated with drug makers. Subject to federal approval, links new drug discount program to Medi-Cal for the purpose of obtaining rebates on drugs.
Assistance to business and labor organizations	<ul style="list-style-type: none"> No such provision. 	<ul style="list-style-type: none"> Establishes drug discount program to assist certain business and labor entities.
Prescription Drug Advisory Board	<ul style="list-style-type: none"> No such provision. 	<ul style="list-style-type: none"> Creates new nine-member panel to review the access to and pricing of drugs.
Lawsuits over drug profiteering law	<ul style="list-style-type: none"> No such provision. 	<ul style="list-style-type: none"> Changes state law to make it a civil violation for a drug maker to engage in profiteering from the sale of drugs.

ANALYSIS BY THE LEGISLATIVE ANALYST (CONTINUED)

These costs could be partly offset by (1) any funds available for this purpose from a new special fund created by this measure, (2) any private donations received for this purpose, and (3) a portion of the enrollment fees collected for the program. The amount of donations that the state would receive on an ongoing basis for outreach activities is unknown. The amount of available special funds or the fee revenues that would be collected by the state is also unknown. In view of the above, it appears likely that a significant share of the cost of this program would be borne by the General Fund.

Costs for “Float.” This measure requires the state to reimburse pharmacies for part of the amount that they discounted their drugs. This reimbursement reflects discounts for which the state receives rebates from drug makers.

The reimbursement to pharmacies must be made within two weeks after their claims are filed with the state. However, drug makers are required by the measure to pay rebates to the state on at least a quarterly basis. This means that the state could, in many cases, pay out rebates to pharmacies before it actually collects the rebate funds from drug makers. Moreover, any disputes that arise over the actual amounts owed for rebates could further slow payments of rebate funds by drug makers to the state.

This recurring gap in funding between when rebate money is collected by the state and when the state has to pay pharmacies is commonly referred to as float. The cost of the float is unknown, but could amount to the low tens of millions of dollars, depending on the level of participation in the program. Float costs would occur mainly in the early years of implementing this new program. After the program has been fully implemented, rebate funds collected from drug makers should be largely sufficient to reimburse pharmacies.

This measure permits the state to enter into agreements with drug makers to collect some rebate

funds in advance. The amount of funding that the state would receive through such advance payments is unknown. Any float costs that exceeded these advance rebate payments would be borne by the state General Fund.

Potential Savings for State and County Health Programs. The drug discount program established under this proposition could reduce costs to the state and counties for health programs.

Absent the discounts available under such a drug discount program, some lower-income individuals who lack drug coverage might forego the purchase of their prescribed drugs. Such individuals might eventually require hospitalization as a result of their untreated medical conditions, thereby adding to Medi-Cal Program costs. Other individuals might “spend down” their financial assets on expensive drug purchases absent such discounts and become eligible for Medi-Cal. The exact amount of savings to the Medi-Cal Program from a drug discount program is unknown, but could be significant if the program enrolled a large number of consumers.

Similarly, the availability of a drug discount program could reduce costs for other state health programs. It could also do so for county indigent care by decreasing out-of-pocket drug expenses for low-income persons who require medications, thereby making them less likely to rely on county hospitals or clinics for assistance. The extent of these potential savings is unknown.

Other Fiscal Effects. This measure would affect both the prices and quantities of prescription drugs sold in California. In turn, this could affect taxable profits of drug makers and businesses that provide health care for their employees, as well as consumers’ disposable income. These changes could affect state revenues. Changes in the prices and quantities of drugs sold could affect state expenditures as well. The net impact of these factors on state revenues and expenditures is unknown.